**(2010) 11 RAJ CK 0100**

**In the Rajasthan High Court**

**Case No :** Sales Tax Revision No. 161 of 2010

Assistant Commercial Taxes Officer — APPELLANT

Vs

Aasab — RESPONDENT

**Date of Decision :** 22-11-2010

**Acts Referred:**

Rajasthan Sales Tax Act, 1994 — Section 78(10A), 78(2)

**Citation :** (2010) 11 RAJ CK 0100

**Hon'ble Judges :** Narendra Kumar Jain, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the Petitioner.

2. The vehicle in dispute bearing registration No. HR 47/8049 was checked by the assessing officer on 22.01.2004 and on production of documents it was found that the seal of check post of Commercial Taxes Department of the State of Rajasthan was not there on the documents. Assessing officer issued a notice u/s 78(2)(b) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as ''the Act of 1994'') to levy penalty u/s 78(10A) of the Act of 1994. The Assessee neither appeared nor filed any reply, therefore, assessing officer passed a penalty order dated 05.02.2004 u/s 78(10A) of the Act of 1994.

3. Being aggrieved with the same an appeal was preferred by the Assessee, which was allowed by Deputy Commissioner(Appeals) vide order dated 26.05.2006. Order passed by Deputy Commissioner (Appeals) was upheld by Rajasthan Tax Board, while dismissing the appeal of the Department vide judgment dated 03.12.2009, which is under challenge in this revision petition preferred on behalf of the department.

4. Submission of learned Counsel for the Petitioner is that since seal of check post was not available on the required documents, therefore, assessing officer was fully justified in levying penalty u/s 78(10A) of the Act of 1994. Deputy

 

Commissioner(Appeals) as well as Rajasthan Tax Board both committed an illegality in setting aside the penalty order passed by assessing officer, which may now be restored.

5. I have considered submissions of learned Counsel for the Petitioner in the light of reasons assigned by both the appellate authorities for setting aside the penalty order passed by the assessing officer. Both the appellate authroities have recorded a concurrent finding that all the relevant documents were available at the time of checking of the goods/vehicle and penalty has been levied only on the ground that seal of check post was not available on them. This fact has not been disputed by learned Counsel for the Petitioner also.

6. Provisions of Section 78(10A) of the Act of 1994 are not mandatory but they are directory in nature, as held by Division Bench of this Court in State of Rajasthan and Anr. v. Tajiander Pal, reported in (2003) 6 Tax 84. The Division Bench of this Court further held that if required documents were available and tax had already been paid then intention to evade tax can not be inferred.

7. In view of ratio laid down by Division Bench of this Court, it is clear that there was no intention of Assessee to evade tax, as all the documents were available at the time of checking of goods/vehicle and both the appellate authorities were right in setting aside the penalty order passed by the assessing officer. Said orders cannot be interferred with by this Court in revisional jurisdiction.

8. Since no question of law is involved in this revision petition, therefore, the same is dismissed in limine.